



## Child Custody and Visitation Guidelines

Custody is a legal arrangement that establishes who has the right to make decisions about a child and where a child will live. Custody only applies to children under the age of 18. When you get a custody order from a judge, it will determine two types of custody: legal custody and physical custody.

### **What is Legal Custody?**

Legal custody means legal responsibility for the child. This includes the right to make decisions regarding the child's health, education, and general welfare. You could have joint legal custody (the parents make decisions about the child together) or sole legal custody (one parent has the right to make decisions about the child).

### **What is Physical Custody?**

Physical custody means a child's living arrangements—typically, where the child lives, eats and sleeps. It includes a child's residency or visitation schedule. You could have joint physical custody (the child stays with each parent some of the time); or sole physical custody (the child lives mostly with one parent.)

### **What if I just want to see my kids?**

Visitation (sometimes called access) is your right to see and have contact with your child while the child lives with the other parent. You and the other parent can arrange visitation in whatever way suits your family (for example, one afternoon per week, or overnight on alternate weekends, or several weeks during the summer). If you want a court order regarding visitation, you can file for one.

### **Who decides on the custody and visitation arrangement?**

If there is no court order, both parents have equal rights to legal and physical custody. Parents can agree on any custody and visitation arrangement they believe is appropriate.

### **What if we can't agree?**

The Family Court offers free mediation through the Multi-Door Dispute Resolution Division where trained mediators work with you and the other parent to develop an agreement. You can use multi-Door without having a court case. Check your area for this service.

### **Do I need a court order?**

You may want a custody order if you and the other parent challenging your custodial rights, or to avoid such disagreements or challenges in the future. A custody order can be helpful because it is legally enforceable, which means a judge can require the parents to follow it.

### **Can I file for custody?**

In order for a court to make a custody determination, the court must have authority to decide your case. This is called jurisdiction. Although there are several ways courts could have jurisdiction, the most common is when court is currently or was very recently in the child's home state. This means that:

- The child has been living in a state. for at least six months before the case is filed, or
- The child lived in a state and has been away less than six months, and even though the child is no longer in a specific state, a parent or person acting as a parent continues to live in that state.

### **How can I start a custody or visitation case?**

In order to start a case, you must file a Complaint for Custody and/or Visitation. After you file the complaint you must get a copy to the defendant according to

very specific legal requirements. See the information sheet *How to Serve Divorce or Custody Papers* for more details about those requirements.

If someone else has already filed a complaint against you, you are the defendant. After you have been legally served with a copy of the complaint, you must file the *Answer to Complaint for Custody and/or Visitation* within 21 days. After you file your answer, you must give a copy to the plaintiff.

Whether you are the plaintiff or the defendant, you can get the necessary court pleadings at your local clerk of courts office. Check your local county's website to see if you can access the information online.

### **What will the judge do if the other parent and I don't agree?**

The judge will have you try to mediate through the Multi-Door program.

If you cannot agree after mediation, there will be a custody trial. Each party will try to prove what is in the best interest of the child. Once the trial is complete, the judge will decide, based on the evidence, what arrangement is best.

### **How does the judge decide custody?**

The judge must decide what is in the best interest of the child. Also, the law assumes that joint custody is in the child's best interest—that it is best for a child for both parents to be involved in making decisions.

However, the judge can award sole custody if the judge decides that joint custody is not in the child's best interest, or if there has been child abuse, child neglect, parental kidnapping, or domestic violence.

### **What does the law mean by "best interest of the child"?**

To determine what is in the best interest of a child, the judge must consider anything that has a bearing on what is best for the child. In addition, the law says the judge must specifically consider these factors:

- The wishes of the child;
- The wishes of the parents;
- The child's relationship with his or her parents, siblings, and others;

### **For More Information**

You can research a free Family Court Self-Help Center in your area. The Center can explain the process to you, help you complete the proper legal papers, and direct you to other free legal resources.

- The child's adjustment to his or her home, school, and community;
- The mental and physical health of all individuals involved;
- Evidence of domestic violence;
- The parents' ability to communicate and make shared decisions about the child;
- The willingness of the parents to share custody;
- The prior involvement of each parent in the child's life;
- The potential disruption of the child's social and school life;
- The distance between the parents' homes;
- The demands of parental employment;
- The age and number of children;
- The sincerity of each parent's request;
- The parent's ability to financially support a joint custody arrangement;
- The impact on Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibilities, and medical assistance; and
- The benefit to the parents.

### **Can someone other than a mother or father (like a grandmother, uncle, sister or friend) file for custody?**

Sometimes. In limited circumstances, a third party—someone other than a mother or father—can file for custody of a child. The most common circumstances in which that is possible are: (a) when the third-party has the agreement of the parent who was caring for the child (within some time in the past 3 years); (b) when the third-party has been living with and caring for the child, as a parent would, for 4 of the past 6 months; or (c) when the child is currently living with the third-party and custody needs to be awarded to the third party in order to prevent harm to the child. The judge must then decide whether there are good enough reasons to give custody to someone who is not the mother or father.

### **Once a custody or visitation order is in place, can it be changed?**

The court can always change a custody/visitation order. This is usually done by filing a Motion to Modify Custody/Visitation. The person who wants to change the arrangement must convince the judge that there has been some kind of significant change in the situation since the order was entered, and that the new arrangement is in the child's best interest.